

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION**

FEDERAL INSURANCE COMPANY, PA-
CIFIC EMPLOYERS INSURANCE COM-
PANY, ACE AMERICAN INSURANCE
COMPANY, ACE PROPERTY AND CASU-
ALTY INSURANCE COMPANY, INDEM-
NITY INSURANCE COMPANY OF
NORTH AMERICA, and WESTCHESTER
FIRE INSURANCE COMPANY,

Plaintiffs

v.

SHAW INDUSTRIES, INC.,

Defendant and

and

COMMERCE & INDUSTRY INSURANCE
COMPANY; FIREMAN'S FUND INSUR-
ANCE COMPANY; FIRST STATE INSUR-
ANCE COMPANY; EMPLOYERS MU-
TUAL LIABILITY INSURANCE COM-
PANY; GREAT AMERICAN INSURANCE
COMPANY; U.S. FIRE INSURANCE COM-
PANY; TRAVELERS CASUALTY AND
SURETY COMPANY; WESTPORT INSUR-
ANCE CORPORATION f/k/a PURITAN IN-
SURANCE COMPANY; JOHN DOE IN-
SURERS 1-100;

Nominal Defendants.

CIVIL ACTION NO. 1:23-cv-01367-RDP

**SHAW INDUSTRIES, INC.'S ANSWER AND AFFIRMATIVE DEFENSES
TO COMMERCE AND INDUSTRY INSURANCE COMPANY'S CROSS-CLAIM**

Pursuant to Federal Rule of Civil Procedure 12, Defendant Shaw Industries, Inc. ("Shaw")
responds as follows to the January 10, 2024 Cross-Claim filed by Commerce and Industry Insur-
ance Company ("Commerce"):

ANSWER

1. Paragraph 1 contains a legal conclusion to which no response is required.

2. Shaw admits that it seeks insurance coverage from Commerce for the Underlying Actions¹ referenced in Paragraph 2. The allegations contained within the Underlying Actions speak for themselves, and Shaw refers to authenticated copies of those pleadings for their content.

3. Denied.

The Parties

4. Shaw lacks sufficient knowledge or information to respond to the allegations in Paragraph 4 and therefore denies those allegations at this time.

5. Admitted.

Jurisdiction and Venue

6. Admitted.

7. Admitted.

8. Admitted.

9. Denied.

Factual Background on the Policies

10. Upon information and belief, admitted.

11. Shaw admits that the policies issued by Commerce are primary commercial general liability policies and refers to the original or authenticated copies of those documents for their terms.

12. Denied.

¹ Any defined terms in Commerce's Cross-Claim shall have the same definition here unless otherwise stated.

Factual Background on the Underlying Actions

13. Admitted.

14. The allegations contained within the Underlying Actions speak for themselves, and Shaw refers to authenticated copies of those pleadings for their content. Shaw denies liability in any of the Underlying Actions.

Count I

Declaratory Judgment

15. Shaw incorporates by reference its response to Paragraphs 1 through 14 of the Cross-Claim as if fully set forth herein. Shaw denies any allegations in the heading to Count I.

16. Admitted.

17. Denied.

In response to the PRAYER FOR RELIEF and *ad damnum* clause beginning WHEREFORE, including its subparts (1) through (3), Shaw denies that Commerce is entitled to any of the relief sought.

Except as expressly admitted in this Answer, all allegations of Commerce's Cross-Claim are denied.

AFFIRMATIVE DEFENSES

Without assuming any burdens of proof that, under law, belong to Commerce, Shaw submits the defenses below to Commerce's Cross-Claim:

FIRST DEFENSE

Commerce's Cross-Claim fails to state a claim against Shaw on which relief can be granted.

SECOND DEFENSE

Shaw pleads the general issues and denies every allegation of Commerce's Cross-Claim that is not expressly admitted above.

THIRD DEFENSE

Commerce's Cross-Claim depends on the underlying evidence obtained through discovery or proven at trial of the ongoing Underlying Actions and thus cannot be determined until the parties' liabilities and obligations, if any, are determined in the Underlying Actions.

FOURTH DEFENSE

The terms of the policies on which Commerce tries to avoid or limit their obligations to Shaw are undefined, vague, ambiguous, and must be strictly construed against Commerce.

FIFTH DEFENSE

To deny coverage would defeat Shaw's reasonable expectations under the policies.

SIXTH DEFENSE

To the extent that Commerce has breached its policies or its obligations with respect to defense, settlement, and indemnity, it is entitled to no relief.

SEVENTH DEFENSE

Commerce's claims are barred by the doctrine of waiver, consent, and ratification.

EIGHTH DEFENSE

Commerce's claims are barred by the doctrine of acquiescence.

NINTH DEFENSE

Commerce's claims are barred by the doctrine of estoppel.

TENTH DEFENSE

Commerce has failed to properly reserve its rights.

ELEVENTH DEFENSE

To the extent shown through discovery, Shaw raises all of the affirmative defenses set forth in F.R.C.P. 8 and F.R.C.P. 12(b) and none of these defenses are waived.

TWELFTH DEFENSE

Commerce's Cross-Claim should be dismissed based on *forum non conveniens* or transferred to a more convenient forum pursuant to 28 U.S.C. § 1404.

THIRTEENTH DEFENSE

Shaw reserves the right to amend or supplement its Answer to assert other defenses as may become known to it or as discovery reveals.

PRAYER FOR RELIEF

WHEREFORE, Shaw respectfully requests the Court:

1. Enter final judgment on the merits dismissing, with prejudice, Commerce's Cross-Claim;
2. Declare that Commerce owes a duty to defend and indemnify Shaw for the claims asserted in the Underlying Actions;
3. Award Shaw its attorneys' fees and other costs associated with defense of this action;
4. Award Shaw such other relief which it may be entitled to in law and in equity.

Respectfully submitted, this 16th day of January, 2024.

BADHAM & BUCK, LLC

/s/ Brannon J. Buck

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CERTIFICATE OF SERVICE

This is to certify that on this day I served the foregoing by using the Court's CM/ECF system, which will send notice of the filing to all counsel authorized to receive it.

This 16th day of January, 2024.

/s/ Brannon J. Buck